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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/772,687	01/30/2001	Ellis K. Cave	47524-P104CP1-09908773	8575
29053	7590	12/05/2005	EXAMINER	
DALLAS OFFICE OF FULBRIGHT & JAWORSKI L.L.P. 2200 ROSS AVENUE SUITE 2800 DALLAS, TX 75201-2784			SHEW, JOHN	
		ART UNIT	PAPER NUMBER	
			2664	

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/772,687	CAVE ET AL.
	Examiner	Art Unit
	John L. Shew	2664

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 October 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 23-38 and 47-63 is/are allowed.
- 6) Claim(s) 1 and 39 is/are rejected.
- 7) Claim(s) 2-22 and 40-46 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 January 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 1 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 5 dependent on claim 1 of copending Application No. 09/772,645 amended 12/13/2004, in view of Elliott et al. (Patent number 6614781).

Claim 1, Application No. 09/772,645 amended 12/13/2004 teaches a method for providing enhanced calling services (Application No. 09/772,645 amended 12/13/2004, Claim 1 line 1) referenced by a system for providing an enhanced calling service, comprising interfacing a first communication device to an asynchronous network (Application No. 09/772,645 amended 12/13/2004, Claim 1 lines 2-4) referenced by comprising a first network interface providing interfacing of a first communication device to an asynchronous network, interfacing a second communication device to said asynchronous network (Application No. 09/772,645 amended 12/13/2004, Claim 1 lines 5-6) referenced by a second communication device in the citation of a node in said asynchronous network, interfacing an interactive response process to said asynchronous network, (Application No. 09/772,645 amended 12/13/2004, Claim 1 line 7) referenced by an interactive response process coupled to said asynchronous network, wherein said interactive response process is adapted to directly utilize packet network protocols (Application No. 09/772,645 amended 12/13/2004, Claim 1 lines 7-8) referenced by an interactive response process adapted to directly utilize packet network protocols, establishing a first signaling channel associated with said first communication device and said interactive response process (Application No. 09/772,645 amended 12/13/2004, Claim 1 lines 10-12) referenced by said interactive response process provides control signals to said first network interface wherein the first network interface interfaces a first communication device, directing under control of said interactive response process using said first signaling channel a first media stream associated with

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said first communication device to said second communication device to thereby provide a call (Application No. 09/772,645 amended 12/13/2004, Claim 1 lines 11-13, Claim 5 lines 1-2) referenced by the interactive response process provides control signals to said first network interface to direct at least a portion of said first media stream to a node in said asynchronous network and said node is associated with a called party. Application No. 09/772,645 amended 12/13/2004 does not teach directing a third media stream from said interactive response process to said first communication device during a time in which said first media stream is directed to said second communication device.

Elliott teaches a directing a third media stream from said interactive response process to said first communication device during a time in which said first media stream is directed to said second communication device (FIG. 6C, FIG. 6D, column 42 lines 56-67, column 43 lines 1-6, column 230 lines 22-32, column 233 lines 37-43) referenced by establishing a conference call wherein the media streams of the communication devices are maintained while a third media stream is directed from the IVR to the first communication device to establish a multiparty call by obtaining further code access and phone numbers.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the conference calling IVR of Elliott to the Interactive Response Process of Application No. 09/772,645 amended 12/13/2004 for the purpose of communicating both voice and data over a packet-switched network that is adapted to coexist and communicate with a PSTN as suggested by Elliott (column 4 lines 31-34).

Claim 39 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 72 dependent on claims 63, 68, 69, 70 of copending Application No. 09/772,645 amended 12/13/2004, in view of Elliott et al. (Patent number 6614781).

Claim 39, Application No. 09/772,645 amended 12/13/2004 teaches a method for providing enhanced calling services (Application No. 09/772,645 amended 12/13/2004, Claim 63 line 1) referenced by a method for providing call payment services, comprising interfacing a plurality of communication devices to an asynchronous network (Application No. 09/772,645 amended 12/13/2004, Claim 63 line 2, Claim 69 line 3-4, Claim 72 line 2-3) referenced by interfacing a first communication device to an asynchronous network redirect first media stream to a second communication device and dialogue to a desired third communication device where communications devices 1-3 form a plurality of communication devices, interfacing an interactive response process to said asynchronous network (Application No. 09/772,645 amended 12/13/2004, Claim 63 line 3) referenced by interfacing an interactive response process to said asynchronous network, wherein said interactive response process is adapted to directly utilize packet network protocols (Application No. 09/772,645 amended 12/13/2004, Claim 63 line 3-4) referenced by wherein said interactive response process is adapted

to directly utilize packet network protocols, directing a first media stream associated with a first communication device of said plurality of communication devices to said interactive response process (Application No. 09/772,645 amended 12/13/2004, Claim 63 lines 5-6) referenced by directing a first media stream associated with said first communication device to said interactive response process, accepting said first media stream by said interactive response process (Application No. 09/772,645 amended 12/13/2004, Claim 63 line 7) referenced by accepting said first media stream by said interactive response process, determining at least two communication devices of said plurality of communication devices for use in communication as a function of said accepted first media stream (Application No. 09/772,645 amended 12/13/2004, Claim 63 lines 20-22) referenced by redirecting as a function of said accepted information said first media stream to said second communication device wherein determination of the plurality of devices are first and second communication devices, directing a second media stream from said interactive response process to a second communication device of said plurality of communication devices (Application No. 09/772,645 amended 12/13/2004, Claim 63 lines 20-21) referenced by redirecting as a function of said accepted information said media stream from said interactive response process to said second communication device, and directing during a time in which said second media steam is directed from said interactive response process to said second communication device a third media stream from said interactive response process to a third communication device of said plurality of communication devices (Application No. 09/772,645 amended 12/13/2004, Claim 70 lines 4-9, Claim 72 lines 1-3) referenced by

the third media stream directed to said first communication device and an interactive dialogue with respect to a desired third communication device wherein a new media stream is to be established to the third communication device, wherein said third communication device is one of said at least two communication devices of said plurality of communication devices (Application No. 09/772,645 amended 12/13/2004, Claim 63 line 2, Claim 69 line 3-4, Claim 72 line 2-3) referenced by interfacing a first communication device to an asynchronous network redirect first media stream to a second communication device and dialogue to a desired third communication device where communications devices 1-3 form a plurality of communication devices thus communication device 3 is the third communication device of the plurality of communication devices.

This is a provisional obviousness-type double patenting rejection.

Allowable Subject Matter

2. Claims 2-22, 40-46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 23-38, 47-56, 57-63 are allowed.

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to John L. Shew whose telephone number is 571-272-3137. The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on 571-272-3134. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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